

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 502 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMADBHAI A KARBHARI SINCE DIED THROUGH HIS HEIRS.

Versus

COLLECTOR BHARUCH

Appearance:

MR NK MAJMUDAR for Petitioners
SMT SIDDHI TALATI for Respondent No.1
None present for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/97

ORAL JUDGMENT

#. This Special Civil Application is directed by petitioner against the order dated 9.12.85 of the Gujarat Revenue Tribunal at Ahmedabad in Revision Application No.TEN B.A.81 of 1984.

#. The facts of the case in brief are that the land in dispute was originally belonging to one Shri Jibhai

Maganbhai Patel. In the year 1982 this land was sold by the said person to the petitioner. It is not in dispute that the land was of new and restricted tenure and therefore the sale of the said land could have been made only with previous sanction of the Collector. The payment of premium as the State Government may, by general or special order determine, is also to be made before the same can take place. The Bombay Tenancy and Agricultural Land Rules, 1956, lays down the circumstances and conditions subject to which sanction shall be given by the Collector under Section 43 for transfer of the land. The petitioner has also moved for permission for non agricultural use of the land for putting up a brick kiln. While that matter has come up before the authorities it has been found that while granting the sanction for the sale of land, premium has not been assessed and charged. So the matter was taken up by the Collector and under the order dated 27th December 1983, premium has been fixed at the rate of Rs.37,000/- per acre and total amount demanded was Rs.2,12,750/-. That order has been challenged by petitioner by filing Revision Application which came to be dismissed under order dated 9.12.85. Hence this Special Civil Application.

#. The only contention raised by learned counsel for the petitioner is that while considering the matter for grant of permission for non agricultural use of the land, the matter could not have been taken to be a matter for sanction for sale of land. That stage has been crossed when the sanction has been granted for the same.

#. The learned counsel for the respondents, on the other hand contended that it is a case where the petitioner is playing a trick with the authorities and he is not a bonafide person. When the land was of new and restricted tenure, premium has to be charged while granting sanction for the sale thereof and at this stage in case the amount of premium has not been fixed in accordance with the Rules, then certainly the Collector can undertake the exercise at any stage or even when he was considering the matter for grant of permission for non agricultural purpose of the said land, which exactly has been done by the Collector in the present case. There cannot be any res-judicata or any prohibition in exercise of powers for fixation of premium for sale of new and restricted tenure of land.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Before the Collector, who was the first authority, the petitioner has not raised any contention which he sought to raise before the Tribunal and now before this Court. A plain reading of the order of Collector leaves no doubt in the mind of the Court that the petitioner's counsel who was appearing before the said authority has accepted the position that premium has to be paid by the petitioner and dispute was only raised regarding the quantum of amount of premium. The petitioner has not chosen to take this point before the Collector and rightly so, as his liability to pay the premium could not have been defended. Once the petitioner has submitted to the jurisdiction of Collector and not raised this objection, the petitioner is estopped from raising this objection before the revisional Court as well as before this Court.

#. Otherwise also, on merits, I do not find any substance in the contention of the learned counsel for the petitioner. The Tribunal found, as a matter of fact that on page 11 of the record of the case, is a copy of letter No.1415 of March 1983 addressed by the Collector to the District Development Officer, Bharuch, relating to this land and on the subject of fixing the premium. In this letter it has been mentioned that the market price of the land was assessed at Rs.37,000/- per acre. The contention that while considering the matter for grant of permission of non agricultural use, this matter could not have been considered is the contention in futility. In case there was liability of the petitioner to pay the premium for sanction of the sale of land of new and restricted tenure, then this liability cannot be escaped by petitioner on a technical ground. It is a case where an error has been found by the authority in not charging premium from the petitioner and the authority was perfectly within its jurisdiction and competence to correct the said error at any time for which even there cannot be any question of limitation. If such a contention is allowed to be accepted then the persons who could manipulated the things will give ditch to the Government and the Government will be put to suffer heavy loss of revenue. The contention raised by learned counsel for petitioner is a dishonest plea on the part of petitioner. When the petitioner knew very well that the amount of premium has to be paid on grant of sanction for sale of land, he should have voluntarily paid the same and should not have taken such technical plea when the authorities have undertaken procedure to determine the amount of premium. The Tribunal has also not committed any error in confirming the order of the Collector.

#. This petition has been filed by the petitioner under Article 227 of the Constitution of India and remedy of writ under Article 227 of the Constitution is not as a matter of course and right. Extra ordinary powers are to be exercised only for the honest and law abiding citizens and not for the persons who try to deceive the Government. When it was a matter of transfer of new and restricted tenure of land where premium has to be paid, the petitioner could not have taken any exception or any ground whatsoever. In the facts of the case, because of the fact that the petitioner has not raised objection before the Collector, this Court will not be justified in extending its jurisdiction under Article 227 of the Constitution in the present case. This Court, sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Powers of this Court must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice will be done unless this Court interferes. As stated earlier, it is not the case where the authorities have committed any error much less any illegality in passing the orders of demanding premium from the petitioner and in case this Court interferes with the order of the authorities, then it will cause grave injustice to the respondent.

#. In the result, this Specail Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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